

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2005 FEB 25 P 3:20

MAKSIM LUTSKOV,
Petitioner.

v.

LOIS RUSSO,
SUPERINTENDENT OF
SOUZA-BARONOWSKI
CORRECTIONAL CENTER

Assented to Motion to Amend Petition
For Writ of Habeas Corpus To Strike Issue III

04/2601-PBS

Now comes the Petitioner, Maksim Lutskov, and hereby moves to amend his Petition Under 28 U.S.C. § 2254 For Writ of Habeas Corpus, by striking Issue III (arguing the cumulative effect of the errors). In a teleconference with counsel for petitioner on February 22, 2005, Assistant Attorney General Maura D. McLaughlin assented to this request.

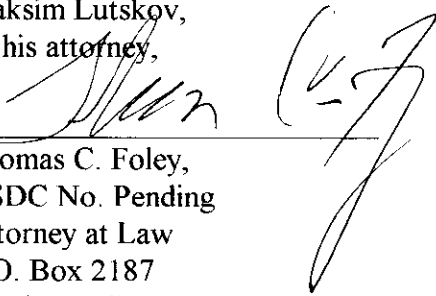
As reasons therefor, in his Petition, the petitioner raised three issues. All three of the issues had been raised before the Massachusetts Appeals Court, but only the first two were raised in an Application for Further Appellate Review to the Supreme Judicial Court, thus exhausting the petitioner's state court remedies on Issues I and II only. Accordingly, Issue III (arguing the cumulative effect of the errors) is not properly before this Court.

Accordingly, the petitioner requests leave to amend his petition to strike Issue III from his petition, and to go forward on Issues I and II only. See Rose v. Lundy, 455 U.S. 509, 510 (1982) (a state prisoner who has both exhausted and unexhausted claims can obtain prompt federal review of the exhausted claims if he files a mixed petition and then amends it to remove the unexhausted claims). See also Nowaczyk v. Warden, New Hampshire State Prison, 299 F.3d 69, 75 (1st Cir. 2002) (same); Lacy v. Gabriel, 732 F.2d 7, 12 (1st Cir. 1984)

(emphasizing that, under Rose, the petitioner “was entitled all along to present only a part of the claims available to him”).

February 23, 2005

Respectfully submitted,
Maksim Lutskov,
by his attorney,



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